

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY APRIL 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1816

Introduced by Assembly Member Yamada

February 18, 2014

An act to amend Section 1420 of the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1816, as amended, Yamada. Long-term health care facilities.

(1) Existing law provides for the licensure and regulation by the State Department of Public Health of health care facilities, including long-term health care facilities, as defined. Existing law establishes procedures to be followed when the department receives a written or oral complaint about a long-term health care facility. A complaint is defined to mean any notice to the department, other than a report from the facility, of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute a violation.

This bill, *on or before July 1, 2015*, would require the department to ~~complete its investigation of the complaint within 40 working days of its receipt, except that this period may be extended up to an additional 30 days if the department has diligently attempted, but has not been able, to obtain necessary evidence related to the investigation~~ *set a performance benchmark for completing its investigations within a defined number of days after receiving the complaint, not to exceed 60 working days*. The bill would require the department, if it extends an investigation beyond ~~40 working days~~ *the number of days specified in*

the benchmark, to notify the complainant, in writing, of the basis for the extension. ~~The bill would also require, if the investigation exceeds 70 working days due to circumstances beyond the department's control, that the department notify the complainant in writing and by telephone or e-mail of the delay in the investigation and the reason for the delay.~~ The bill would require, effective July 1, 2015, *and upon request of the complainant*, that the ~~department's written determination~~ *department* provide specific findings concerning ~~each~~ *an* alleged violation, and include a summary of the evidence upon which the determination is based. The bill would require the department to comply with those specified time periods established for investigations and inspections of complaints from a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that may constitute an alleged violation of these requirements. *The bill would require the department to analyze its compliance with the benchmark in its annual system and staffing analysis to make that analysis available to the relevant fiscal and policy committees of the Legislature, and to post it on the department's Internet Web site.*

(2) Existing law provides the complainant with 5 business days after receipt of the notice of the department's determination in which to request an informal conference.

This bill would, instead, provide the complainant with 15 days after receipt of the notice in which to request an informal conference.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1420 of the Health and Safety Code is
2 amended to read:
3 1420. (a) (1) Upon receipt of a written or oral complaint, the
4 department shall assign an inspector to make a preliminary review
5 of the complaint and shall notify the complainant within two
6 working days of the receipt of the complaint of the name of the
7 inspector. Unless the department determines that the complaint is
8 willfully intended to harass a licensee or is without any reasonable
9 basis, it shall make an onsite inspection or investigation within 10
10 working days of the receipt of the complaint. In any case in which
11 the complaint involves a threat of imminent danger of death or
12 serious bodily harm, the department shall make an onsite inspection

1 or investigation as soon as practicable, and in no case more than
2 24 hours of the receipt of the complaint. In any event, the
3 complainant shall be promptly informed of the department's
4 proposed course of action and of the opportunity to accompany
5 the inspector on the inspection or investigation of the facility. Upon
6 the request of either the complainant or the department, the
7 complainant or his or her representative, or both, may be allowed
8 to accompany the inspector to the site of the alleged violations
9 during his or her tour of the facility, unless the inspector determines
10 that the privacy of any patient would be violated thereby.

11 (2) When conducting an onsite inspection or investigation
12 pursuant to this section, the department shall collect and evaluate
13 all available evidence and may issue a citation based upon, but not
14 limited to, all of the following:

15 (A) Observed conditions.

16 (B) Statements of witnesses.

17 (C) Facility records.

18 (3) ~~The~~ *On or before July 1, 2015, the department shall complete*
19 *its set a performance benchmark for completing its investigation*
20 *within 40 working days from receipt of within a defined number*
21 *of days after receiving the complaint. The 40-working-day period*
22 *may be extended up to an additional 30 days if the department has*
23 *diligently attempted, but has not been able to obtain, necessary*
24 *evidence related to the investigation. The department shall analyze*
25 *its compliance with this requirement in its annual system and*
26 *staffing analysis prepared pursuant to subparagraph (B) of*
27 *paragraph (2) of subdivision (d) of Section 1266. This analysis*
28 *shall include, but not be limited to, a tabulation of open*
29 *investigations and completed investigations that summarizes the*
30 *number of extensions and their duration. The performance*
31 *benchmark may be less than, but shall not exceed, 60 working*
32 *days.*

33 (4) If the department extends an investigation beyond ~~40~~
34 *working days the number of days specified in the performance*
35 *benchmark*, it shall notify the complainant, in writing, of the basis
36 for the extension, and shall include in the notice ~~any outstanding~~
37 *evidence and the sources from which the evidence has been sought,*
38 *the status of the investigation and the anticipated completion date.*
39 ~~In the unusual event that an investigation must be extended beyond~~
40 ~~70 working days due to circumstances beyond the department's~~

1 control, the department shall notify the complainant in writing and
2 by telephone or e-mail of the delay in the investigation and the
3 reason for the delay. The department shall, thereafter, complete
4 the investigation as expeditiously as possible.

5 (5) Within 10 working days of the completion of the complaint
6 investigation, the department shall notify the complainant and
7 licensee, in writing, of the department's determination as a result
8 of the inspection or investigation.

9 (6) Effective July 1, 2015, *upon request of the complainant*, the
10 ~~department's written determination~~ *department* shall provide
11 specific findings concerning ~~each~~ *an* alleged violation, and shall
12 include a summary of the evidence upon which the determination
13 is made. The written determination shall not disclose the names
14 of individual residents.

15 (b) Upon being notified of the department's determination as a
16 result of the inspection or investigation, a complainant who is
17 dissatisfied with the department's determination, regarding a matter
18 which would pose a threat to the health, safety, security, welfare,
19 or rights of a resident, shall be notified by the department of the
20 right to an informal conference, as set forth in this section. The
21 complainant may, within 15 days after receipt of the notice, notify
22 the director in writing of his or her request for an informal
23 conference. The informal conference shall be held with the
24 designee of the director for the county in which the long-term
25 health care facility that is the subject of the complaint is located.
26 The long-term health care facility may participate as a party in this
27 informal conference. The director's designee shall notify the
28 complainant and licensee of his or her determination within 10
29 working days after the informal conference and shall apprise the
30 complainant and licensee in writing of the appeal rights provided
31 in subdivision (c).

32 (c) If the complainant is dissatisfied with the determination of
33 the director's designee in the county in which the facility is located,
34 the complainant may, within 15 days after receipt of this
35 determination, notify in writing the Deputy Director of the
36 Licensing and Certification Division of the department, who shall
37 assign the request to a representative of the Complainant Appeals
38 Unit for review of the facts that led to both determinations. As a
39 part of the Complainant Appeals Unit's independent investigation,
40 and at the request of the complainant, the representative shall

1 interview the complainant in the district office where the complaint
2 was initially referred. Based upon this review, the Deputy Director
3 of the Licensing and Certification Division of the department shall
4 make his or her own determination and notify the complainant and
5 the facility within 30 days.

6 (d) Any citation issued as a result of a conference or review
7 provided for in subdivision (b) or (c) shall be issued and served
8 upon the facility within three working days of the final
9 determination, unless the licensee agrees in writing to an extension
10 of this time. Service shall be effected either personally or by
11 registered or certified mail. A copy of the citation shall also be
12 sent to each complainant by registered or certified mail.

13 (e) A miniexit conference shall be held with the administrator
14 or his or her representative upon leaving the facility at the
15 completion of the investigation to inform him or her of the status
16 of the investigation. The department shall also state the items of
17 noncompliance and compliance found as a result of a complaint
18 and those items found to be in compliance, provided the disclosure
19 maintains the anonymity of the complainant. In any matter in which
20 there is a reasonable probability that the identity of the complainant
21 will not remain anonymous, the department shall also notify the
22 facility that it is unlawful to discriminate or seek retaliation against
23 a resident, employee, or complainant.

24 (f) For purposes of this section, "complaint" means any oral or
25 written notice to the department, other than a report from the
26 facility, of an alleged violation of applicable requirements of state
27 or federal law or any alleged facts that might constitute a violation
28 of these requirements.

29 (g) The department shall apply the timeframes for investigation
30 or inspection established in this section to a report from the facility
31 of an alleged violation of applicable requirements of state or federal
32 law or any alleged facts that might constitute a violation of those
33 requirements.

34 (h) ~~(1)~~ It is the intent of the Legislature in enacting the
35 amendments that added this subdivision that the department
36 endeavor to complete investigations of complaints ~~made on behalf~~
37 ~~of a resident of a long-term health care facility within 40 days~~
38 *within the benchmark established pursuant to this section.*

39 ~~(2) It is also the intent of the Legislature that only those~~
40 ~~complaints that require additional time because the department~~

1 has diligently attempted, but has been unable, to obtain necessary
2 evidence related to the investigation receive an extension of up to
3 30 days, as necessary to complete the investigation.

4 ~~(3) It is the Legislature's further intent that after 70 working~~
5 ~~days, if a complaint investigation has not been completed, the~~
6 ~~department shall contact the complainant to share with the~~
7 ~~complainant the status of the complaint and the reason for the delay~~
8 ~~to the extent that the information can be shared.~~

9 *(i) The department shall analyze its compliance with the*
10 *benchmark developed pursuant to paragraph (3) of subdivision*
11 *(a) in its annual system and staffing analysis prepared pursuant*
12 *to paragraph (2) of subdivision (d) of Section 1266. The analysis*
13 *required pursuant to this subdivision shall be made available to*
14 *the relevant fiscal and policy committees of the Legislature and*
15 *shall be posted on the department's Internet Web site. The analysis*
16 *shall provide data on the department's performance and shall*
17 *include, at a minimum, a tabulation of all of the following:*

18 *(1) Open investigations.*

19 *(2) Completed investigations.*

20 *(3) Number and percentage of investigations that meet the*
21 *benchmark.*

22 *(4) Average length of time to complete an investigation.*